

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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**CYBER WEBSMITH, INC. dba DENTAL
WEBSMITH, INC., a Kentucky
corporation,**

Plaintiff,

vs.

**PROGRESSIVE HEALTH
CHIROPRACTIC, INC., an Ohio
corporation,**

Defendant.

Case No. **2:08 CV 584**

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff, Cyber WebSmith, Inc. dba Dental WebSmith, Inc. ("Dental WebSmith") designs and creates Internet websites for dental practices throughout the United States and Canada.

2. Dental WebSmith has spent considerable time and resources creating original creative texts, photographs, images, headers, and compilations thereof to use in its design of Internet websites.

3. Dental WebSmith has obtained a United States copyright registration covering its omnibus website, which includes over 100 pages of original texts, photographs, clinical sketches, headings, menus, and formatting.

4. Without Dental WebSmith's consent, defendant Progressive Health Chiropractic, Inc. ("Defendant") willfully reproduced, created a derivative work, and displayed Dental WebSmith's copyrighted material on its own Internet website.

5. Dental WebSmith has been substantially harmed as a consequence of Defendant's willful misconduct.



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JURISDICTION AND VENUE

6. This is a civil action arising under the copyright laws of the United States. 17 U.S.C. §101 *et seq.* This Court has subject matter jurisdiction over this case pursuant to 15 U.S.C. §1121, 28 U.S.C. §1338, and 28 U.S.C. §1331.

7. This Court has subject matter jurisdiction over the state law claim pursuant to 28 U.S.C. §1367 because the state law claim is so related to the federal claim such that it forms part of the same case or controversy and arises from a common nucleus of operative facts.

8. This Court has personal jurisdiction over Defendant because it is a corporation organized under the laws of Ohio, with its primary place of business in Ohio.

9. Venue is proper under 28 U.S.C. §1391(b) and (c) because Defendant resides in this judicial district and a substantial part of Defendant's misconduct giving rise to Dental WebSmith's claim occurred in this district.

PARTIES

10. Plaintiff, Cyber WebSmith, Inc. *dba* Dental WebSmith, Inc. is a corporation organized under the laws of Kentucky, and has its principal place of business at 7111 Benton Rd., Paducah, Kentucky 42003.

11. Defendant is a corporation organized under the laws of the Ohio, and, on information and belief, has its principal place of business at 1996 Hard Road, Columbus, Ohio 43235.

FACTS GIVING RISE TO CLAIMS FOR RELIEF

Plaintiff's Business

12. Since the fall of 2000, Dental WebSmith has designed and created Internet websites for dental practices throughout the United States and Canada.

13. By 2003, Dental WebSmith had created an omnibus Internet website containing Dental WebSmith's original texts, photographs, clinical sketches, headings, menus, and formatting described above (the "Dental WebSmith Website").



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14. Dental WebSmith enables its clients to pick and choose materials from the Dental WebSmith Website. Dental WebSmith is then able to tailor those materials to the client's specific needs.

15. Because of the high-quality and usability of the Dental WebSmith Website, clients pay a premium for Dental WebSmith's services and for a license to use Dental WebSmith's copyrighted materials.

16. The Dental WebSmith Website addresses numerous aspects of dentistry and dental practices, including but not limited to dental conditions (e.g. an abscessed tooth, bleeding gums, chipped tooth), dental procedures (e.g. micro-dentistry, apicoectomy, tooth whitening), and logistical information about dentists (e.g. making an appointment, the dentist's contact information, submitting patient questions).

17. The Dental WebSmith Website contains over 100 pages of original texts—which Dental WebSmith has authored—describing dental conditions, dental procedures, and logistic details for dental practices.

18. The Dental WebSmith Website also displays numerous original photographs and clinical sketches to illustrate the conditions and procedures at issue, and to enhance the aesthetic feel of the Dental WebSmith Website generally.

19. Dental WebSmith either created the photographs and sketches displayed on the Dental WebSmith Website, or it hired agents to create these materials specifically on its behalf. In the latter case, Dental WebSmith acquired all rights to these materials, including all copyrights.

20. Dental WebSmith has also incorporated creative headers and menus into the Dental WebSmith Website to enhance the aesthetic appeal. Similarly, the texts and images displayed in the Dental WebSmith Website are displayed in an easy-to-read and appealing format, with the images integrated into the text and the text separated into discrete segments. Dental WebSmith was the author of all of the headers, menus, and formatting that appear on the Dental WebSmith Website.



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21. Dental WebSmith owns the copyright to all of the materials that appear on the Dental WebSmith Website, including the texts, photographs, clinical sketches, headers, menus, formatting, selection, and other elements regarding the compilation of material. Dental WebSmith also owns the copyright to the look and feel of the Dental WebSmith Website as a whole, serving as a compilation of the various texts, photographs, clinical sketches, menus, headers, and formatting.

22. Among its copyrighted materials is a photograph of a model from whom Dental WebSmith had obtained by assignment all copyrights, rights of publicity, and other rights governing the use of her likeness (the "Photograph").

23. Dental WebSmith has invested considerable time and resources in creating the materials appearing on the Dental WebSmith Website, with the knowledge that its clients desire high-quality, aesthetically appealing, informative, and user friendly dental websites, and will pay a premium for a service that can provide these elements.

24. On January 17, 2003 Dental WebSmith submitted the entirety of the Dental WebSmith Website to the United States Copyright Office for registration.

25. On January 23, 2003 the United States Copyright Office issued a certificate of copyright registration for the Dental WebSmith Website, Registration No. TXu 1-082-643. Dental WebSmith's copyright registration for the Dental WebSmith website is attached hereto as Exhibit A, and incorporated herein by reference.

26. Dental WebSmith affixes—and requires its clients to affix—notice of Dental WebSmith's copyright registration for the Dental WebSmith Website at the bottom of all published instances of the Dental WebSmith Website or elements thereof.

Defendant's Misconduct

27. Defendant owns and operates a chiropractic practice, which includes, on information and belief, one office located in Ohio.



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28. On information and belief, on December 7, 2006, Defendant and/or Defendant's agent acquired the Internet domain name phchiropractic.com and sought to create an Internet website resolving to this domain name (the "Defendant Website").

29. On information and belief, Defendant and/or Defendant's agents, created and published the Defendant Website. In creating the Defendant Website, Defendant and/or Defendant's agent reproduced and modified the Photograph without Dental WebSmith's consent.

30. Defendant and/or Defendant's agent then publicly displayed the Defendant Website, which contained the Photograph copied from the Dental WebSmith Website. The Defendant Website became generally accessible to the public through the Internet, and on information and belief, attracted a substantial number of viewers each month. A printout from the Defendant Website containing the Photograph is attached hereto as Exhibit B, and incorporated herein by reference.

31. On information and belief, Defendant and/or Defendant's agent knew or should have known that the Defendant Website contained Dental WebSmith's copyrighted Photograph, and willfully displayed the Photograph knowing it was subject to Dental WebSmith's copyrights.

32. On information and belief, Defendant and/or Defendant's agent displayed Dental WebSmith's copyrighted Photograph willfully and with the specific intent to profit from Dental WebSmith's creativity and success.

FIRST CLAIM

Federal Infringement of a Registered Copyright—17 U.S.C. §501

33. Plaintiff realleges and incorporates by reference each and every allegation set forth in Paragraphs 1 through 32, inclusive.

34. Dental WebSmith owns an active United States copyright registration for its Dental WebSmith Website, which consists of over 100 pages of original texts,



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photographs, clinical sketches, headers, menus, and formatting, including the Photograph.

35. Dental WebSmith has affixed—and requires its clients to affix—a copyright notice to the bottom of every instance of Dental WebSmith's copyrighted materials from the Dental WebSmith Website, including every display of the Photograph.

36. On information and belief, without Dental WebSmith's consent, Defendant and/or Defendant's agent reproduced the Photograph from Dental WebSmith's Website, as defined in 17 U.S.C. §§106 & 501.

37. On information and belief, without Dental WebSmith's consent, Defendant and/or Defendant's agent prepared derivative works based on the Photograph, as defined in 17 U.S.C. §§106 & 501.

38. Without Dental WebSmith's consent, Defendant and/or Defendant's agent publicly displayed the Photograph on the Defendant Website, as defined in 17 U.S.C. §§106 & 501.

39. As a consequence, Defendant has violated Dental WebSmith's exclusive copyright in the Photograph, and as such, is an infringer of the copyright of Dental WebSmith, as that term is defined in 15 U.S.C. §501.

40. On information and belief, Defendant and/or Defendant's agent engaged in the above-described actions willfully, with knowledge that the Photograph was subject to Dental WebSmith's copyright, and with the intent to trade off of Dental WebSmith's creativity and success.

41. Defendant's copyright infringement has proximately caused Dental WebSmith to suffer injury in fact and loss of money and/or property in an amount to be proved at trial.



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SECOND CLAIM

Violation of Right to Publicity

42. Plaintiff realleges and incorporates by reference each and every allegation set forth in Paragraphs 1 through 32, inclusive.

43. Defendant has obtained by assignment all of the model's rights of publicity regarding the use of the Photograph of her, including all of her rights to her likeness and image.

44. Without Dental WebSmith's consent, Defendant and/or Defendant's agent publicly displayed the Photograph on the Defendant Website, in violation of Ohio common law.

45. Defendant and/or Defendant's agent publicly displayed the Photograph on the Defendant Website for the purpose of selling, soliciting purchase of, and marketing its chiropractic services.

46. On information and belief, Defendant and/or Defendant's agent engaged in the above-described actions willfully, with knowledge that the person displayed in the Photograph—or her assignee of rights in the Photograph—had not consented to Defendant's use of her likeness.

47. Defendant's misconduct has proximately caused Dental WebSmith to suffer injury in fact and loss of money and/or property in an amount to be proved at trial.

PRAYER

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That the Court enter a judgment against the Defendant that it has:
 - a. Committed acts of copyright infringement in violation of 17 U.S.C. §501;
 - b. Violated Dental WebSmith's right of publicity in violation of Ohio common law.



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2. That the Court issue injunctive relief against Defendant, enjoining Defendant from:
 - a. Infringing upon Plaintiff's copyrights;
3. That the Court order Defendant to pay Plaintiff's damages as follows:
 - a. Plaintiff's treble damages (composed of Plaintiff's actual damages and Defendant's profits) in an amount to be determined according to proof pursuant to 17 U.S.C. §504(b), or in the alternative, statutory damages of \$150,000 per violation, pursuant to 17 U.S.C. §504(c), for Defendant's willful infringement of Plaintiff's copyrights;
 - b. Plaintiff's costs and attorneys' fees incurred by Plaintiff in prosecuting this action, pursuant to 17 U.S.C. §505;
 - c. Such other damages as the Court shall deem appropriate;
 - d. Interest, including prejudgment interest, on the foregoing sums;
4. That the Court grant to Plaintiff such additional relief as is just and proper.

DATED: June 16, 2008

By: 

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